Supreme Court, U.S.
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No. (1)

IN THE
SUPREME COURT OF THE UNITED STATES

Juan Bautista Rivera,

Petitioner,

v.

The Superior Court Of The State Of California In And For The County Of Solano, Real Parties In Interest, Mary L. Snow and Stephen M. Snow

Respondents.

On Petition For Writ of Certiorari To The Superior Court Of The State of California In And For The County Of Solano.

PETITION FOR WRIT OF CERTIORARI

Juan Bautista Rivera
1133 Beelard Drive
Vacaville, CA. 95687
Tel. 1-707-452-9728

QUESTIONS PRESENTED

1. Whether, Respondents' can tortuously create and maintain their side front yard XYLOSMAS shrub and hedges in violation of the local, state and federal statutory provisions involved, and as direct and proximate result cause waste onto their property and damages and waste onto petitioner' property and interfere with petitioner rights to enjoyment of life and property as other members of the community.

2. Whether under the constitutional and statutory provisions involved, Respondents' after their *oral* transfer, delegation, proposal and *agreement* with Petitioner' on (June 22, 2005 on or about 9:45PM), to *cut down*, Respondents' tortuously created and maintained variances, nuisances, waste and *violations* onto their property and onto Petitioner' property, can willfully, suppress, aver and state a set of different thins and/or intentionally spoliate their *oral agreement* and arrest, prosecute and file suits' against Petitioner' as herein claimed and alleged, and/or whether under the recited constitutional and statutory provisions involved, and Petitioner' *reliance and performance to cut down* Respondents' tortuously created and maintained variances, nuisances, waste and *violations* onto compliance, can diminishes, Respondents' property value, so as to deny Petitioner' the rules of spoliation of contract and evidence, estoppel and his constitutional and statutory provisions involved.

3. Whether the lower courts abuse their discretion in denying Petitioner' petition for writ of certiorari and/or petition for review when the petitions' are brought to enforce or protect Petitioner' substantial rights to enforce Respondents' *oral agreement* to bring Respondents' recited *violations* onto compliance, with local, state and federal, constitutional and statutory provisions involved, and the member of the community, conditions, covenants and restrictions and there is no other plain speedy and adequate remedy in the ordinary course of law or equity and/or whether the lower courts abuse their discretion in denying Petitioner' those rights under the state and federal constitutional and statutory provisions involved because it may have consider the case lest worthy of importance than other cases.

PARTIES

4. Juan Bautista Rivera, Petitioner' is Defendant' in the above named action.

5. Mary L. Snow and Stephen M. Snow are the Plaintiffs' and Real Parties in Interest in the above named action. [1]

6. In that Respondents' Mary L. Snow and Stephen M. Snow, have an interest that is directly affected by the proceedings in action titled Mary L. Snow, et al. v. Juan Rivera, Civil Action (FSC052747, and writs entitle Juan Bautista Rivera v. Superior Court of Solano County, FSC029178, FCS029830, A119639 and S158896) which holds judgment against Petitioner'.

7. Petitioner' is the person beneficially interested in issuance of a writ of certiorari in the actions titled Mary L. Snow & Stephen M. Snow v. Juan Bautista Rivera, (FSC052747, FSC029178, and writs entitle Juan Bautista Rivera v. Superior Court of Solano County, FCS029830, A119639 and S158896) which are neither appealable nor reviewable by appeal.

8. Respondents' Honorable Raymond C. Wieser, Honorable Franklin R. Taft, Honorable William C. Harrison, Hon. Justice Stein, Hon. Justice Swager, Hon. Justice Margulies and

[1] **The Defendant' is referred herein as Petitioner'. The Plaintiffs' and Real Parties in Interest are referred as, Respondents'.**

Honorable Chief Justice George, are now and at all times mentioned in this petition, judges of judiciary system of the state of California and/or in that capacity are and at all times relevant to this proceedings have determined that Petitioner' shall pay Respondents' for *cutting down* and Respondent's tortuously created and maintained variances, nuisances and waste and *violations* of the parties properties.

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JURISDICTION

9. On May 10, 2007, following trial de novo, the Superior Court of Solano County, filed judgment against Petitioner'. (*Appendix A, Reporters Transcripts, May 4, 2007, Appendix B, Pg. 47-48*). [2] No re-hearing or motion to vacate the Superior Court, judgment was sough as direct and proximate result of the finality of the trial de novo proceedings. (*Code of Civil Procedure § 116.780).*

10. Thus, on July 3, 2007, Petitioner' filed a Notice of Application for Writ of Certiorari and Writ of Certiorari to the Superior Court of Solano County, in the Appellate Department of the Superior Court of Solano County. (*California Rules of Court, Rule 8.490; Code of Civil Procedure § 1105, §1088, Excerpts of Petition for Certiorari, Appendix M*). On July 24, 2007, the Court, issued a NOTICE OF HEARING ON WRIT OF MANDATE. (*Appendix C*).

On September 11, 2007, Petitioner' appeared for hearing; the Respondent's failed answer or to appear; the Appellate Department of the Superior Court of Solano, then served Petitioner' with a tentative ruling, thus oral argument was then held, whereas Petitioner re-arise his constitutional and statutory rights involved, the court then again denied Petitioner' writ of certiorari. (*Appendix D and*

[2] **The May 4, 2007, Reporters Transcripts, will be referred herein after as (Appendix B).**

Reporters Transcript September 11, 2007, Appendix E). [3]

11. On November 6, 2007, Petitioner' filed a NOTICE OF APPLICATION FOR WRIT OF CERTIORARI with the Court of Appeal in and for the First Appellate District of the State of California.

The Court, on November 14, 2007, denied, Petitioner' writ of certiorari. (*Appendix F*).

12. On December 10, 2007, Petitioner' moved the Supreme Court and filed and application for relief from default and a petitioner for review, to file his petition for review.

On December 10, 2007, the Court, granted Petitioner' relief from default, and ordered briefing on the merits. (*Appendix G*). Respondents' answered by a party(s), off records; Petitioner' reply in opposition to Respondents' suppressions, alterations and differently stated of thins or spoliations of the proceedings. On January 16, 2008, the Court denied, Petitioner' Petition for Review. (*Appendix H*).

13. No petition for re-hearing was filed, as direct and proximate result of the finality of the denial of review by the Supreme Court of the State of California. (*California Rules of Court, Rule 8.264 (b) (2) (A)*).

14. This Court shall have jurisdiction under 28 U.S.C. § 1257.

[3] **The September 11, 2007, Reporters Transcripts, will be referred herein after as (Appendix E).**

NOTIFICATION

15. Neither United States nor any federal department, office, agency or employee is a party, neither California nor any state department, office, agency or employee thereof is a party. 28 U.S.C. 2403(b) may apply and the corresponding agency, have been served.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

16. **West's Ann. California, Civil Code § 1460. Covenants running with the land defined**

COVENATS RUNING WITH THE LAND, WHAT. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land. (Enacted 1872).

17. **West's Ann. California, Civil Code § 1462. Covenants running with the land; direct benefit of existing property**

SAME. Every covenant contained in a grand of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land. (Enacted 1872).

18. **West's Ann. California, Civil Code § 1465. Covenants running with land; person bound**

WHO ARE BOUND BY COVENANTS. A covenant running with the land binds those only who acquire the whole state of the covenantor in some part of the property. (Enacted 1872).

19. **West's Ann. California, Civil Code § 3479, Acts Constituting Nuisance.**

Any thin which is injurious the health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the sense, or obstruction to the free use of property, so as to interfere with the comfortable use enjoyment of life and property, or unlawfully obstructs the free or use, in customary manner of any navigate lake, or river, bay stream, canal or basin, or any public park, square, street, or highway is a nuisances. Leg. H. 1872, 1874 p. 268.

20. **West's Ann. California Civil Code §3481. Private Nuisance.**

Every nuisance not included in the definition of the last section is private. Leg. H. 1872.

21. **West's Ann California Civil Code § 3483. Liability of Successive Owners.**

Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable thereof in the same manner as the one who first created it. Leg. 1872.

22. **West's Ann. Code of Civil Procedure § 731. Nuisance; action to abate; damages parties**

authorized to sue; public nuisance

Any action may be brought by any person whose property is injurious affected, or whose personal enjoyment is lessened by a nuisance, as the same is defined in section thirty-four hundred and seventy-nine of the Civil Code, and by the judgment in such action the nuisance may be enjoined or abated as well as damages recovered thereof. A civil action may be brought in the same manner of the people of the State of California to abate a public nuisance, as the same is defined in section thirty-four hundred and eight of the Civil Code, by the district attorney of any county in which such nuisance exist, or by the city attorney of any town or city in which such nuisance exist, and each of said officers shall have concurrent right to bring such action for a public nuisance existing within the town or city, and such district attorney, or city attorney, of any county or city which the nuisance the nuisance exists must bring such action whenever directed by the board of supervisors of such county or whenever directed by the legislative authority of such town or city. (*Enacted 1872. Amended by Stats 1905. c 128, § 1.*)

23. **City of Vacaville Land Use Development Front Yard Ordinance, Ch 14.09.074.120 — Masonry Walls and Fences, Section 14.09.074.120. A. 1. b.**

A. Standards. Walls and Fences shall conform to the following standards of this chapter or of any applicable specific plan or policy plan regulation regarding wall and fences, unless

otherwise provided by this section.

1. Wall and Fences Height.

b. Front yard. Walls, fences and hedges within the required front yard shall not exceed three feet in height.

24. **West's Ann. California, Civil Code § 1656. Implied Incidents**

NECESSARY INCIDENTS IMPLIED. All thins that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be executed.

Enacted (1872.)

25. **West's Ann. California, Civil Code § 1657. Performance; time**

TIME OF PERFORMANCE OF CONTRACT. If no time is specified for the performance of and act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—it must be performed immediately upon the thin to be done being exactly ascertained. (Enacted 1872.)

26. **West Ann. California, Evidence Code § 623. Estoppel by own statement or conduct**

When a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.

(Stats. 1965, c 299, 2, operative Jan. 1. 1977.)

27. **West's Ann. Code of Civil Procedure, Section 77. Appellate Department of superior court; composition; designated judges; decisions; transaction of business; jurisdiction and powers; procedure**

(a) In every county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds necessary, four judges.

The Chief Justice shall assign judges to the appellate division for the specific term pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in the state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges whom shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county

other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amount ad are payable for those purposes to justices of the Supreme Court under the rules of the * * *. California Victim Compensation and Government Claims Board * * *.

In addition, a retired judge shall receive for the time so served, amounts equal to that which the judge would have received if the judge had been assigned to the superior court of the county.

Additional changes indicated underline; deletions by asterisks * * *

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal in all cases in which an appeal may be taken to the superior court or to the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court.

(f) The power of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of, the appellate division.

(h) Notwithstanding * * * subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court. (Stats 2006, c 538 (S.B. 1852), § 60

28. **West's Ann. California, Constitution Art. I, § 1. Inalienable rights.**

Section 1. All people are by nature free and independent and have inalienable rights. Among those are enjoyment of defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.
(Added. Nov. 5, 1974.)

29. **West Ann. California Codes, Constitution Art. I § 9.**

Sec. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed.
(Added Nov. 5. 1974.)

30. **United States Code Service, U. S. Constitution Art. I, § 10, Clause 1. Powers denied states—Treaties—Money—Ex post facto**

laws—Obligation of contracts.

No state shall enter into any treaty, alliance, or confederation; grand letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin and tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

31. **United States Code Service, U.S. Constitution Amendment 1**
Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for redress of grievances.

32. **United States Code Service, U.S. Constitution Amendment 9**
Rights retained by people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

33. **United States Code Service, U.S. Constitution Amendment 14 Sec. 1 [Citizens of the United States.]**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

34. **United States Code Service, Title 42 U.S.C. § 1981. Equal rights under the law**

(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to the punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other.

(b) "Make and enforce contracts" defined. For purpose of this section, the term make and enforce contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contract relationship.

(c) Protection against impairment. The right protected by this section are protected against impairment by nongovernment discrimination and impairment under color of State law.

(R.S. § 1977; Nov. 21, 1991, P. L. 102-166, Title I, § 101 105 Stat. 1071.)

35. **United States Code Service, Title 42 U.S.C. § 1982. Property Rights of citizens**

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit,

purchase, lease, sell, hold, and convey real and personal property. (R. S. § 1978.)

STATEMENT OF THE CASE

36. This petition for writ of certiorari arises, to secure Petitioner's constitutional rights under the federal, state and local constitution and statutory law.

37. Petitioner' claims and realleges and incorporates by reference all paragraphs and provisions above-recited as though the same were fully set forth herein.

38. Petitioner' claims and alleges that on or about 1989 the City of Vacaville trough their zoning and planning agendas and their engineering studies, surveys and developments, approved the land were Petitioner' and Respondents' leaves, thus within their *police power* enacted, *City of Vacaville Planning Commission, Land Use and Development, standard Section 14.09.074.120. A. 1. b;* and *approved certain covenants, condition and restrictions, limiting* the community properties, *front yards, masonry wall, plants shrubs and hedges to (3) feet in height*, whereas Petitioner' on or about 1992, purchase his family residence.

39. The City engineering studies, surveys and developments for the community front yard shows to have on or about (*119*) inches of side front yard space between the adjacent property line's for *each party* front yard plants, shrubs and hedges, thus within that *limited* space, the *parties* back yard entry, takes approximately (*30*) inches of side

walk, for *each* entry, this reduces the *parties* front side yard land use space to about (*89*) inches, therefore planting those shrubs at the center, the *parties* will have (*44.5*) inches and/or (*3.8*) feet space *each* for the growing of *their* side front yard, plants, shrubs and hedges.

40. The developer in consideration thereto, in designing and decorating the subdivision, side and front yards, planted certain XYLOSMAS plants that are maintained through the community side and front yards within the (*3*) feet in height.

41. As direct and proximate result of the former owners of 1127 Beelard, divorce and/or separation, and their neglected property, on or about 2001, Respondents' became successors in interest to their property and as direct and proximate result of those side front yard XYLOSMAS plants, shrubs and hedges, *violations*, overgrowing over (*30*) feet in height and tortuously creating and causing a variance, nuisance, waste and damages onto Petitioner' storm drain and sprinkle system, and impairing and depriving Petitioner' of his right to enjoyment of life and property, Petitioner' between 2001-2003, gave Respondents' *oral notice* of their *violations* within the covenants, conditions and restriction and the constitutional and statutory provisions involved. [4]

[4] **In so acting, Respondents' *never took any action* to decease their *violations* onto their property and onto Petitioner' property, as he under oath he so testifies, Appendix B, Pg. 7, L. 7-16; See, Appendix I, Petitioner' evidence of his *second* notice on 11/11/03, Exhibit dated 11/15/03).**

42. **Afterward**, Respondents' Stephen M. Snow, trespassed onto Petitioner' private property and sought to by force and intimidations remove, Petitioner' family pets, Petitioner and his immediate family then needed to use force to close their residence door.

43. As direct and proximate result of Respondents' continuing, neglects and omissions within the above-recited *torts* and *violations*, Petitioner on ***11/11/03*** gave a *second oral notice* to Respondent' Mary L. Snow, and witness Samantha Snow; Respondent' Mary L. Snow then *reply* with *racial anarchies and slurs* against Petitioner: *"you Mexican are the worth people go over-there,"* thus, Petitioner' then reply by giving Respondent' ***(30)*** day's notice to decease abate the recited *torts* and *violations*.

44. In so acting, Respondent' then falsely and maliciously and without or reasonable or probable cause, sought the arrest of Petitioner' moreover, upon her failure to make the above-recited arrest, Respondent' **afterward** on 11/11/03, intentionally and maliciously joined in concert with Respondent' Stephen M. Snow, whom *subsequently* trespassed and assaulted and intimidated Petitioner' and his immediate family, Petitioner' and his immediate family then sought help form (911), whereas the Respondents' in obstruction of justice *evaded* their *arrest*, by suppressing and altering and differently averring and stating and spoliating the events at the scene of their intentional torts and

crimes. [5]

45. As direct and proximate result of the Respondents' continuing to neglect and omit, and continuing to tortuously create and maintain their variances, nuisances, waste, *violations* and *damages*, Petitioner' on *May 6, 2005*, gave a *third* and *written notice* to Respondents' of their torts and property rights violations and continuing threats as above-recited.

46. As direct and proximate result on *June 22, 2005, on or about (9:45PM)*, Petitioner' found Respondent' Stephen M. Snow, adjacent to Petitioner' property line, as direct and proximate result, Petitioner' conferred with Respondent' in references the above-recited *written notice* dated *May 6, 2006*, whereas Respondent' in want, and omission of his duty to maintain their property *orally* transferred, delegated and proposed onto Petitioner' to *cut down* [t]heir tortuously created and maintained variances, nuisances, waste and *violations* onto the *parties* properties.

47. On July 5th 2005 in *reliance* of the above-recited facts, *oral agreement* and federal , state and local, constitutional and statutory provisions involved, Petitioner' *cut down* the *Respondents'* tortuous created and maintained variances, nuisances, waste and *violations* onto compliance with the community statutory standards limits and

[5] **In so acting, Respondents' *never took any action* to decease their acts and violations. (Appendix I, Exhibit dated 11/15/03; Appendix to the S. Ct. Petition for Writ of Certiorari, Exhibit 8).**

the *parties* property rights under their conditions, covenant and restriction. (*City of Vacaville Planning Commission, Land Use and Development, standard Section 14.09.074.120. A. 1. b; Appendix K*).

48. *Although* that Respondents' had on June 2, 2005, made their *oral agreement* with Petitioner' and as direct and proximate result of Petitioner' *reliance* and *performance*, Respondents' on *July 5, 2005*, suppressing and altering and differently averring and stating and spoliating the above-recited *oral agreement*, sought and arrested Petitioner' for vandalism. (*Penal Code § 594*).

49. Moreover, as Petitioner' was *released* from the *above-recited* arrest, Petitioner' sought to clean-up, Respondents' branches and debrief of his property, whereas Respondents' *afterward* continue to suppress their *oral agreement* and thereto harass and took pictures of Petitioner' private images, Petitioner' then *objected* to Respondents' suppressions and averments of thins and *evasion* of Petitioner' *privacy*. *(Appendix, L).*

50. On July 6, 2005, Respondents' as above-recited sought a temporary restraining order and without *notice of action* and without *notice of hearing*, obtained a temporary restraining order against Petitioner. (FSC026290). Whereas, after service, Respondent' Mary L. Snow, *followed* Petitioner' through the streets of Vacaville, in so acting Respondent' Stephen M. Snow have *seek*, petitioner spouse. (*Appendix M, Pg. 13-14*).

51. Moreover, on or about July 7, 2005, Respondents' as above-recited, also sought a home

owner's insurer claim, in which they *subrogated* their *rights* of claims *to* their *insurer*, the insurer without investigation of facts or law, paid Respondents' claims in the amount of (2,011.67), and within their subrogated rights the insurer sought restitution from Petitioner'.

52. **Although,** that Respondents' were compensated, on or about October 26, 2006 commenced this action (*FSC052747*) against Petitioner' in the Superior Court of the State of California in and for the County of Solano.

53. In so acting as above-recited, Respondents' claimed 4,568.00 and alleged that Petitioner' *cut down* two trees on their property, and that he has been arrested and restrained by order of the civil department court. (*Superior Court of Solano,* (FSC052747), *Clerk Records, formSC-100; West's Ann. Code of Civil Procedure § 85 and § 86; § 116.110*).

54. **Accordingly'** to Respondent's acts and agreement on June 22, 2005, on or about October of 2006, Respondents' insurer and criminal vandalism complaints' against Petitioner' were dismissed. (*Insurance Code §530, §533, Penal Code §594).*

55. On December 12, 2006, Petitioner' in proper, filed a motion to dismiss and quash the service of process and/or to coordinate, Respondents' *above-recited* civil actions (*FSC052747 and FSC026200*). Thereto, *Petitioner'* raised a (*20*) page brief claiming his constitutional and statutory provisional rights involved to *protected* his property from Respondents' variance, nuisance, waste and *violations*, and his right *rights* to *equal protection*

and *enjoy his life* and *property* as *white citizens* within the *community,* Petitioner' also raised his right to *reliance to performance* under Respondents' *oral agreement* with Petitioner *to cut down* their *tortuously* created and maintained nuisances, variances, wastes and *violations* within *Respondents' property. (Superior Court Clerk Records, Judicial Counsel form SC-105).*

56. On or about 1/23/07, Petitioner' served, Respondents' with subpoena for production of documents and witness at trial. (*Superior Court, Clerk Records, form SC-107*).

57. Respondents' on February 7, 2007, dismissed their civil harassment action above-recited, against Petitioner. (*Code of Civil Procedure § 527.6).*

58. On February 14, 2007, Respondents' *denied,* Petitioner' *request* for production of documents, witness and papers, subsequently Petitioner' *moved* the court, for an order for *production.* The Court *denied* Petitioner' motion and proceeded to trial. (*Code of Civil Procedure § 116.520(a)*).

59. On or about February 14, 2007, Petitioner' also *moved* the court to hear Petitioner' motion to *dismiss,* the court also *denied,* Petitioner *motion* and proceeded to trial.

60. At trial, Respondents' as *above-recited within their other actions,* continued to *suppress, alter* and *differently aver* and *state* and *spoliate* Respondent's *oral agreement* with Petitioner' *to cut down* those variances, nuisances, waste and *violations* onto their property and Petitioner'

property, Petitioner' then objected to Respondents' suppressions, spoliations, alterations, misleading averments and statements, thus the court *sanctioned* Petitioner' *objections* and as direct and proximate result, Respondents' obtained judgment against Petitioner' in the amount of ($2,697.64).

61. As direct and proximate result, Petitioner' retained criminal defense counsel John M. Coffer, and appealed. (*Appendix B*).

62. As *above-recited*, and with the *de novo trial*, Respondent Stephen M. Snow, continue to suppress his *oral agreement* of June 22, 2005; thereafter *Mary L. Snow sought* upon *witness Stephen M. Snow,* to suppress and averment other differently thins than those in his *oral averment and agreement* with Petitioner as on *June 22, 2005,* whereas *Stephen M. Snow spoliating the trial averred and stated a differently state of other thins,* than those *on June 22, 2005*, with Petitioner' *to cut down* [t]heir variance, nuisances, waste and violations within the *parties* properties. [6]

[6] ***Appendix B, Pg. 3, L. 15-21: Mr. Snow, well the reason we're here, Your Honor, is because on July 5, 2005, Mr. Rivera came into our front side yard unauthorized, without notice and completely cut down one tree, approximately 35 to 40 feet tall. It fell into our back side yard. He did that without regard to the safety of my wife and daughter, who were at home, who could have walked outside and been injured. ***Appendix B. Pg. 7, L. 11-12: A. Oh, yes. We - - I've trimmed the trees, and Mr. Rivera has trimmed them prior. ***Appendix B. Pg. Pg. 12, L. 18-28: A. I said I didn't know. I said "if you care to cut it, you trimmed before." We both had trimmed the tree, and if he wanted to trim the tree, then feel free. Q. Given your answer just now, you used the words "cut the

63. **Although**, the *above-recited*, misconducts, suppressions, alterations and averments the trial court entered judgment against Petitioner' for *cutting down* Respondents' *violations* on the *parties* property, and *following* the court below judgment, awarded Respondents' 1,000.00 dollars. (*Appendix A; Appendix B, Pg. 47-48*).

64. Upon trial de novo of these issues, the judgment becomes final and regardless of the prejudicial misconducts or bias or prejudice, there are no further rights to motions for consideration, nor for new trial or appeal. (*Code of Civil Procedure, Article 7, commencing with § 116.710, Code of Civil Procedure § 116.780; California Rules of Court, Rule 8.490; Albelleria v. District Court of Appeal (1941) 17 Cal. 2d 280, 290*).

65. **Thus**, Petitioner' in proper, on July 03, 2007, in the Appellate Department of the Superior Court of Solano, County commenced [t]his extraordinary proceedings on writ for certiorari to the Superior Court, thereto raising those constitutional and statutory provisions involved before the Appellate Department. (*Appendix M*). Whereas, the court after finding merits on the writ, ordered oral argument and a hearing on the matter, which was held on September 11, 2007. (*Appendix C*).

tree if you want to cut the tree" and your wife whispered to you "trim the tree;" is that correct. ***Moreover, (*Appendix B, Pg. 6, L. 21*), the plaintiffs', also under oath concedes: There are *(3)* trees' within 10-15 feet of the land uses space. But see the city and developers engineering studies and survey above-recited.

66. On September 11, 2007, upon Petitioner' appearance and without appearances by Respondents' the Court served a denial of the writ upon Petitioner'; then oral argument was held by Petitioner in protections of those constitutional and statutory provisions involved, the court *further denied* Petitioner' Petition for Writ of Certiorari. (*Appendix E*). [7]

67. Petitioner' then within the applicable limitations filed a Petition for Writ of Certiorari in the Court of Appeal First Appellate District, the Court on November 14, 2007, denied, Petitioner' Petition for Writ of Certiorari. (*Appendix F*).

68. Petitioner' then got cut in default within the 10 day's regulatory limitation for review in the Supreme Court. Petitioner' then made an application with an incorporated petition for review to the Court for relief from default the court on the finding the *merits* on the petition *granted* the *application* for *relief* from *default* and order Respondents' to file answer and reply if any.

69. Respondents' answered by an *outsider* person of records, and within their (*Answer to Petition for Review*), sought and differently stated and averred and suppressed their *oral* transfer delegation, proposal and *agreement* with Petitioner *to*

[7] **Petitioner' incorporates all the facts, claims and allegation of this matter as herein presented to the Courts below and thereto claims and alleges that he has truly and lawfully raised his constitutional protected activities in the Courts below. (Appendix B, Appendix E and Appendix M).**

cut down [t]heir' tortuously created and maintained variances, nuisances, waste and *violations* above-recited and in so acting, and *spoliating* the proceeding, averred vandalism.

70. Petitioner' reply to Respondents' differently stated of thins and suppressive averments and spoliations; thus, the Court on January 16, 2008, summarily denied petitioner writ. (*Appendix G and H*).

REASONS FOR GRANTING THE PETITION

Petitioner' claims and realleges and incorporates by reference all paragraphs and provisions above-recited as though the same were fully set forth herein.

Petitioner' claims and alleges that the state court(s) have departed from the accepted and usual course of judicial proceedings, thereto the *Federal Claims Court*, has decided that circumstances such as nuisances adding or detracting from value, under California law, repudiating of history of property can have significant effects on its value. *(Henderler v. United States 38 Fed. Cl. (1997) 611, 616, 625).* [8]

[8] **Hence real property is *"substandard"* when it *"violates"* local or state law, health, safety or building code and it's not in compliance. (*e.g. Rev. Tax. Code § 17274*). Thus, upon information and believe an appraiser ought in his/her agency opinion, that as direct and proximate result of the city engineering studies and surveys finds' only limited land use space between the**

Petitioner' further claims and alleges that the lower courts does abuses their discretion in permitting Respondents' as above-recited to suppress and alter and differently aver and state and spoliate their *oral agreement* at trial and in answer to Petitioner' Petition for writ certiorari and writ of review, proceedings. (*Silvertri v. General Motors Corp. (4th Cir 2001) 271 F. 3d. 583, 590; Bihun v. At & T Information system, Inc. (1993) 13 Cal. App. 4th 976, 994; Ty Inc. v. Softbelly's Inc. (2003) 353, F, 2d, 528. 534).*

two properties exist, and that as direct and proximate result Respondent's XYLOSMAS pants, were planted as a decorative shrub and hedges for front side yards within the meaning of the community conditions, covenants and restrictions, in which *would not* as direct and proximate result of *cutting* those within their *community standard will diminish their properties values.* (*2 Miller and Star, Cal. Real Estate (Third Ed), Section 4:65; Soderberg v. McKinney (1996) 44 Cal. App. 4th 1760, 1768).*

In so dully *appraiser of facts*, Petitioner' expert witness *John Lichter* opinion report concedes: There is not enough space for three trees in this portion of the yard, in my experience XYLOSMA are typically planted with the intention that they will be shrubs, as Rivera has on the other side of his property in the side yard., In my experience, XYLOSMA are planted with the intention that they be shrubs. Cutting back the XYLOSMA to three feet will not kill the plant. It would send up many shoots (waters-sprouts) and form dense foliage, and could be maintained as hedge at that poi' t as Mr. Rivera has on the other side of his property in the side yard. The plant would change from more open form to a denser form. (*Appendix J*).

Moreover, the attempt by the litigant Respondent' Mary L. Snow, to persuade witness Stephen M. Snow to suppress and differently state spoliate and aver other thins than those *orally agree on June 22, 2005*, is properly admissible against him/her as indication of his/her own belief that his/her claim is weak or unfounded or false. (*Appendix B. Pg. 12, L. 18-28*). **Accordingly**, when the case presents, *misconduct*, suppression or alteration and spoliations of a material fact, it caries and inference adverse to the proponent of evidence.[9]

Whereas, Petitioner' claims and alleges that the City engineering, studies and surveys, his expert testimony and reports and his evidence of variance, nuisances, waste and *violations* by Respondents' property onto Petitioner' property, and the fact that Petitioner' *never took any other action* than those of his *speech* and *reliance* on Respondent's *oral agreement to cut down* the above-recited variances, nuisances, wastes and *violations*, does further raises a material issue of *misconduct* by the Respondents' within [t]heir trial. (*Appendix B*). **Accordingly,** Petitioner' should be entitle to a fair trial, the credibility of his witnesses, his adduced evidence and his *federal, state and local, constitutional and statutory provisional involved* for the protection of his and the community property values.

[9] **Silvertri v. General Motors Corp. (4th Cir 2001) 271 F. 3d. 583, 590; Bihun v. At & T Information system, Inc. (1993) 13 Cal. App. 4th 976, 994; Ty Inc. v. Softbelly's Inc. (2003) 353, F, 2d, 528, 534.**

Thus, Petitioner' claims and alleges that his acts and reliance in protection of his property, appears to be of the very essence of harmony with the underlying principles of ordered due process and liberty—so as to abolish, repudiate and/or allow him to be deprive of those constitutional and statutory provisional rights involved, it is to violate a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

Moreover, when Petitioner' under the foregoing, constitutional, statutory and contractual rights to own property, purchased his property in 1992, he was bound by those, federal, state and local rights and duties and the district conditions, covenant and restrictions, in that he owes duty to his community to maintain his property front and side yard shrubs and hedges with in the *(3)* feet height standards and limits, under these constitutional and statutory provisions involved and the community conditions, covenants and restrictions for the full benefits and enjoy his life and property as other members of the community values. [10]

[10] **Compare the community compliance with, (*City of Vacaville Planning Commission, Land Use and Development, standard Section 14.09.074.120. A. 1. b; Appendix K and Appendix* I, Exhibit dated 11/15/03).**

Accordantly, Respondents' shall be equally bound and equally entitle to all those *duties* and *rights* to maintain and enjoy their life and property as other member of the community. In that when a *violation* of those statutory rights occur the *injured party* as herein Petitioner' shall have the *right* as other member of the community to *speak* and to rely on his detriments, impairments and damages and those contractual and constitutional and statutory provisions involved to *give notice* to the *offenders*, herein *Respondents'* for the protection and enjoyment of his life and property as other members of the community property values. [11]

Thus, among all facts, notices, assaults, evasion of arrest, neglect, omissions, abusive speech, anarchies, arrest(s), restraining orders, insurer claims it would be fair to presumed that Respondent' Stephen M. Snow on (*June 22, 2005 on or about 9:45PM*), was *not coincidently* found *adjacent* to Petitioner' *property line*, but that Respondent' was there awaiting for Petitioner' in *reprisal* to Petitioner' May 6, 2005 letter, (*Appendix I*), and through that *aforethought* had no intention of performance under their due process duties, but an

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[11] **Constitutional and statutory provisions involved, thereto included California, West's Ann. Civil Code § 1460, § 1462, § 1465, § 3481, § 3483, § 3479;; Code of Civil Procedure § 731; City of Vacaville Planning Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; Title 42 U. S. C. § 1981, § 1982; See, Board of Regents v. Roth (1972) 408 U.S. 564, 577; Appendixes, I, J, and K).**

intentional and malicious *coercive* tough to *subject* their *oral agreement* upon Petitioner' *to cut down* [t]heir tortuously created and maintained variances, nuisances, waste and *violations* and to *subsequently,* to Petitioner' *reliance* and *performance*, suppress, alter and spoliate their *actions* and *oral agreement* as herein the evidence shows. (*Appendix B*).

Accordingly, there should be no reason why within *our* due process, *constitutional and statutory provisions involved*, any Respondents' or successors in interest to their property, variances, nuisances, waste and *violations*, whom upon *notice* does intentionally continue to *neglect, omit* and in so acting, willfully trespasses and assaults his neighbors and immediate family, shall be able to *evade estoppel by their own acts, conducts and oral agreement* or *evade* the above-recited *inferences* within their own suppressive, averments, spoliations, acts and conducts, and as direct and proximate result *deprive* Petitioner' an his family *economical status* and set a *constructive eviction.*[12]

This, is worthy of importance and compelling reason as to call for the exercise of [t]his court's supervisory powers. (*City of Vacaville Planning*

[12] **In Chapman v. California (1966), this court recognize that harmless-error rules can work very unfair and mischievous result when, for example, highly important and persuasive evidence, or argument, though legally forbidden, finds its way into a trial in which the question of quilt or innocence is a close one. (386 U.S. 22).**

Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal. 4th 1139, 45 Cal. Rptr. 3d. 21,136 P. 3d 821; Code of Civil Procedure §731; Civil Code §1460, §1462, §1465, § 3479, § 3481, § 3483, §1656, § 1657; Board of Regents v. Roth (1972) 408 U.S. 564, 577; Evidence Code § 623; Insurance Code §530, § 533; 42 U.S.C.S §1981, §1982; California Const Art. I, § 1 and § 9; U. S. Const Art. I, § 10, Clause 1; U.S. Constitution Amendments 1, 9, and Amendment 14, Section 1). [13]

Thus, within our due process, a trial judge is a statutory officer, whose authority is limited and defined by statutes. An act in excess of the power conferred by its regulatory, ordinance, statutes or precedents is an act in excess of its jurisdiction or want of its jurisdiction. In that under due process, Petitioner' should be entitle to the creditability of the city engineering studies and surveys and to the creditability of his testimony and his expert witness

[13] **In that freedom of contract is part of liberty protected by due process clause of Fourteenth Amendment, due process clause of Fourteenth Amendment denies to, state any power to restrict or control obligation of contracts executed and to be performed without state, as attempt to exercise power over subject matter not within its constitutional jurisdiction. (Alaska Packers Asso. V. Industrial Acci Com. (1935) 294 U.S. 352, 354, 79 L. Ed. 1044, 55 S. Ct. 518; 7 Witkin Summary of California Law (10thEd) Constitutional Law (c) [361], Pp. 593, 594; Appendix K; Appendix E, Pg. 4-6).**

confirming those engineering studies and surveys and land uses restrictions as credible and adduced trial evidence. (*Appendix I, J, K; Code of Civil Procedure § 116.520(a)).*

Moreover, when a party such as Petitioner' under the governing due process, petition the Appellate Department of the Superior Court of Solano County, for writ of certiorari, he shall have the due process right to "*three panel judges*" and to the concurrence of "*two*" of the department judges for a valid and lawful decision. In so acting the Appellate Department of the Superior Court, Honorable, William C. Harrison shall not arbitrary or capriciously act by *him self* and/or as *solo* judge in this or any case to deny Petitioners the above-recited rights, so as the honorable judge has done in this matter. (*Appendix E; Code of Civil Procedure, Section 77(a), (b), (d), (e), (f) and (g); See, Code of Civil Procedure §85 and § 86; Albelleria v. District Court of Appeal (1941) 17 Cal. 2d. 280, 286-291; Gollaway Crane & Trucking Co. v. Truck Ins. Exch (1977) 67 Cal. App. 3d. 386, 392, 136 Cal. Rptr. 645, quoting Auto Equity Sales, v. Superior Court (1962) 57 Cal. 2d. 450, 455 [20 Cal. Rptr. 321, 369 P. 2d. 937]*).

Accordingly, the "essential creation of appellate jurisdiction" is "that it receives and corrects the proceedings in a cause already instituted". Applying this definition, this high court has concluded that appellate jurisdiction includes review by writ, to review and correct those

proceedings of inferior courts brought for determination in the manner provided by law. [14] **Likewise**, when the petition is brought to enforce or protect those substantial right, and there is no other plain speedy and adequate remedy in the ordinary course of law, he or she is entitle as a matter of right to the writ, or perhaps more correctly, in other words, it would be and abuse of discretion to deny it." (*Powers v. City of Richmond (1995)10 Cal. 4th 86, 92, 113-114, citing Dowell v. Superior Court (1956) 47 Cal. 2d. 483, 486-487, 304 P. 2d. 1009, quoting Potomac Oil Co. v. Dye (1909) 10 Cal. App. 534, 537, 102 P. 677; accord May v. Board of Directors (1949) 34 Cal. 2d. 125, 133-134, 208 P. 2d. 661*). [15]

[14] **Moreover, "when writ of review" is an exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, presented in a formally and procedural sufficient manner, merely because, the court consider the case less worthy of its attention than others matters. (*Answer to Petition for Review, Pp. 7-8; Code of Civil Procedure § 116.780; West's Ann. Code of Civil Procedure § 85 and § 86*).**

[15] **Thus, it shall not be a better interest of justice to *follow* or deny the merits of a petition on a judgment that has thereto *denied* Petitioner' his protected right to enjoyment of life and property as other member of the community and his right for production of witness and evidence and his right of cross-examination examination of witness and to confer evidence, (*Code of Civil Procedure § 116.520(a)*), and thereto *sanction* Petitioner for his *objections*, and admits and receives the respondents herein at issue suppressions and differently averred and stated thins than those that the evidence and facts does provide to the lower courts.**

Therefore, this Court may review and correct the lower Courts denial, impairment, deprivation and sanction of Petitioner' due process rights to speak and protect his property under the federal, state and local regulations and under his covenants, conditions and restriction, and this Court may review and correct the lower Court denial, impairment, deprivation, sanction or repudiation of Petitioner' rights to production of evidence and cross-examine witness and his right to enter in an *oral agreement* and his *reliance* to *performance* thereon within the meaning of the federal and state constitutions and statutory provisions involved, this court can also review and determine the willfulness and intentional coercions, suppressions, alteration and spoliation by Respondents' under their acts, conducts and *oral agreement* on June 22, 2005 on or about 9:45PM. (*Appendix B, Pg, 3-4, Pg. 12, L. 18-28).*

Accordingly, in *Montana Co. v. St. Louis Mining & Milling Co. (1894)*, any measure of proceeding which having sanction of law, provides for temporary invasion of possession of property with least injury and inconvenience, is not obnoxious to charge of not been due process. (*152 U. S. 160, 172, 38 L. Ed. 398, 14 S. Ct. 506*). In that the federal, state and the city of Vacaville have duly provide property protection by notice under those covenants, conditions and restrictions and statutory regulations for protection of Petitioner' and the community at large properties, and so Petitioner' afforded notice to act in a common and civilized forms, and thus he shall not be derived thereof.

Moreover, property interests are not created by the Constitution. Rather, they are created and their dimensions defined by existing rules or understanding that stem from an independent source such as state law—rules or understanding that secure certain benefits and that support claims of entitlement to those benefits. (*Bishop v. Wood (1976) 426 U. S. 341 at 344, (Citing), Board of Regents v. Roth, 408 U.S. 564, 577; City of Vacaville Planning Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; and covenants conditions, and restrictions, Appendix K).* *** **Accordingly**, within the federal and state constitutional and statutory provisions involved and Petitioner *oral and written notices*, and the Respondents' neglect and omission and their acts to continuing to created and maintained tortuous variances, nuisances, waste and *violations* within their property onto their property and Petitioner property and Respondents' *oral* transfer, delegation and proposal and *agreement* involved, does not take the Respondents' property without due process of law or by vandalism or surprise, simply because, Respondents' so willfully and intentionally and malicious desires to *under oath* suppress, alter, spoliate their *oral* transferred, delegation and *agreement* above-recited. (*O'Neil v. Northern Colorado Irrigation Co. (1916) 242 U. S. 20, 26,61 L. Ed. 123, 37 S. Ct. 7; Southern California Edison Company v. United States (1969) 415 F. 2d. 758; Appendix B, Pg. 3, Pg. L. 15-21, Pg. 12, L. 23-25, Appendix E, Pg. 4-6; Silvertri v. General Motors Corp. (4th Cir 2001) 271 F. 3d. 583, 590; Bihun v. At*

& T Information system, Inc. (1993) 13 Cal. App. 4th 976, 994; Ty Inc. v. Softbelly's Inc. (2003) 353, F, 2d, 528, 534). In that denying Petitioner' his detrimental reliance's and permitting Respondents' too by their means, *under oath* suppress, alter, spoliate and aver and state a different state of thins as on 2001-2003 and through June 22, 2005 and July 5, 2005, is to deprive Petitioner' of the truth in the proceedings and that is to violate a principle of justice so rooted in the traditions and conscience of our people, it is prejudicial error and manifest disregard and impairment of due process of law.

What's more, in so acting Respondents' have also, falsely and maliciously and without reasonable or probable cause portray Petitioner' as sexual offender and so falsely and maliciously have sough upon the Vacaville Police Department and through the District Attorney other arrest(s) and prosecutions against Petitioner' than those herein mentioned and that may or shall be considered, an *oppression* to Petitioner' rights to fear housing and/or an adverse departure from the accepted and usual course of judicial citizens rights to administrative and judicial proceedings, so rooted within our people. *(Penal Code 137(c); Mooney v. Holohan (1935) 294 U.S. 103, 112; 6 Witkin Cal. Procedure (4th Ed) Provisional Remedies, Section (i) [§352], Constitutional protected activities could not provide injunction on protected speech; City of Vacaville Planning Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.*

4th 1139, 45 Cal. Rptr. 3d. 21,136 P. 3d 821; In re Arden and Howe Associated, LTD (1993) 152 B.R. 971, 974-975; Code of Civil Procedure § 731; Civil Code § 1460, § 1462, § 1465, § 3479 § 3481, § 3483, § 1656, § 1657; Title 41 U. S. C. §1981, § 1982; City of Long Beach v. Mansell (1970) 3 Cal. 3d. 462, 488-489; Evidence Code § 623; Insurance Code § 530, § 533; *Auto Equity Sales, v.* Superior Court (1962) 57 Cal. 2d. 450, 455 [20 Cal. Rptr. 321, 369 P. 2d. 937]; *8 Witkin Summary of California Law (10th Ed) Constitutional Law § 1278, §1288; Bradley v. Superior Court (1957) 48 Cal. 2d. 509, 519, 310 P. 2d. 634; California Const Art. I, § 1, and § 9; Colony Hill v. Ghamaty (2006) 143 Cal. App. 4th 1156, 1170, 50 Cal. Rptr 3d 247, 256-257; U. S. Const Art. I, § 10, Clause I; U.S. Constitution Amendments 1, 9, and Amendment 14, Section 1).* In consideration of the foregoing, the judgment (*Appendix B, Pg. 47-48*) lacks due process and evidentiary support, and it carries bias with the lower court judgment and prejudice onto Petitioner' rights.

CONCLUSION

For the foregoing reason, the petition for writ of certiorari should be granted.

Dated: March 13, 2008

Juan Bautista Rivera
Petitioner, In Pro per
1133 Beelard Drive
Vacaville, CA. 95687